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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,144	03/30/2001	Christopher T. Garrad	PPC-780	8686
27777	7590	07/25/2006	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 07/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/823,144	GARRAD ET AL.	
	Examiner	Art Unit	
	Karin M. Reichle	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9, 10, 22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9, 10, 22 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/10/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

Drawings

Description

1. The disclosure is objected to because of the following informalities: 1) In the 4-7-03 amendment to page 2, line 24, line 1 thereof seems to be missing a word or words.

Appropriate correction is required.

Claim Objections

2. Claim 22 is objected to because of the following informalities: in claim 22, line 2, "liner" should be deleted. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. Claims 9-10 and 22-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The portion of the specification relied upon by Applicant, i.e. page 11, line 21-page 12, line 6, discloses a backsheet, i.e. the pantiliner, having an adhesive or other fastener for attaching the wing thereto and optionally that the wing may also have an adhesive for such

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attachment, i.e. at the very least the pantiliner is structured and arranged to permit selective attachment and detachment of the wing thereto and optionally the wing can also be so in addition. However this is not what is claimed. Where is it disclosed that, at a minimum, the wing is so structured and arranged, i.e. the pantiliner is not required to be also, as claimed in claim 9 and that only the wing at a minimum includes adhesive, i.e. the pantiliner is not required to also have adhesive, as claimed in claim 23? If Applicant maintains such language, the portion of the originally filed specification relied upon to teach such features as claimed in a single embodiment should be set forth.

Claim Language Interpretation

4. It is noted that Applicants have not provided any specific definition for any of the claim terminology. Therefore, the ordinary meaning, i.e. dictionary definition, is considered to apply to such terminology. It is further noted that claims 9-10 and 22-23 do not require the first and second end portions as now claimed to be front and rear end portions, respectively, or vice versa. It is also noted that claim 10 is considered a product by process claim since the claim does not clearly set forth when such is dispensed or claim the roll as part of the kit. "Kit" as defined by the American Heritage Dictionary is "a set of articles used for a specific purpose". Finally it is noted that the language added to claim 9 and new claims 22-23 do not require direct or indirect removal or attachment of the entire wing from the entire pantiliner.

Claim Rejections - 35 USC § 102/103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 9-10 and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Hammons et al '484, and thereby Mattingly '047, alone, or in the alternative, under 35 USC 103(a) as being unpatentable over Hammons et al '484 in view of Sneider '491, Robiano DE '628, Noel '458 and Whitehead et al '490.

With respect to Hammons '484, the first portion is 42 or 44, the second portion is the other of 42 or 44, the wing is at least 166, see Claim Language Interpretation section supra, and releasable attachment of the wing, i.e. by hook and loop as claimed in claim 22 or adhesive as claimed in claim 23, is disclosed, e.g., in paragraphs 165-169. Furthermore it is the Examiner's first position that paragraph 85 and thus, Mattingly '047, i.e. its Figures, incorporated thereby, teaches one of the end portions having a maximum width greater than that of the other end portion, i.e. the pantiliner is asymmetrical about the transverse centerline, as now claimed. In any case, the Examiner's second position, note paragraphs 66 and 73 and the Figures of Hammons as well as Sneider at Figures 1 and 3, Robiano at Figures 3 and 5, Noel at col. 6, lines 3-12 and 46-54 and Figures and Whitehead et al at Figures 1-2, i.e. interchangeability of asymmetrical shape, e.g. pear (thong) shape, as claimed, for any other shape, e.g. symmetrical shapes, e.g. oval or hourglass shape. Therefore to make the shape of the pantiliner of Hammons et al one in which the maximum width of one end portion is greater than that of the other end portion (if not already) would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Sneider, Robiano, Noel and Whitehead et al. With regard to the

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preambles of the claims, a "kit" for an absorbent article is claimed. "Kit" as defined by the American Heritage Dictionary is "a set of articles used for a specific purpose". The purpose set forth is "for an absorbent article". Hammons, especially paragraph 168, teaches a set of articles or elements used for the specific purpose of an absorbent article, i.e. a "kit for an absorbent article". With regard to claim 10, this claim is a product by process claim, i.e. claims the wing is dispensed from a roll, see also Claim Language Interpretation section supra, and also note the invention is a kit not a method of dispensing a wing nor a roll of wings. Patentability of product by process claims is based on the end product itself not the method of production. In the instant case the end product is a "kit", i.e. a "kit" for an absorbent article. The end product of Hammons as discussed above is the same and thus the claim is unpatentable even if the product is made by a different process. See MPEP 2113. It is further noted that the claims are broad enough to read on flap 34 of Hammons also since it is releaseably attached to the side edge adjacent flap 36 by fasteners 52, 54 and flap 36.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 9-10 and 23 are rejected under 35 USC 103(a) as being unpatentable over Kons et al '418 in view of Sneider '491, Robiano DE '628, Noel '458 and Whitehead et al '490.

Claims 9 and 23: With regard to Kons '418 the first end portion and the second end portion are shown in the Figures, the wing is 44 and releasable attachment of the wing by adhesive (claim 23) is disclosed at, e.g., the Figures and col. 4, lines 47-65. Therefore the Kons

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et al patent clearly discloses all the claimed structure of the claim except one of the end portions having a maximum width greater than that of the other end portion, i.e. the pantiliner is asymmetrical about the transverse centerline. However, note, e.g., col. 5, lines 67-68 and the Figures of Kons et al as well as Sneider at Figures 1-3, Robiano at Figures 3-5, Noel at col. 6, lines 3-12 and 46-54 and Figures and Whitehead et al at Figures 1-2, i.e. interchangeability of asymmetrical shape, e.g. pear (thong) shape, as claimed, for any other shape, e.g. symmetrical shapes, e.g. oval/oblong/rectangular or hourglass shape. Therefore to make the shape of the pantiliner of Kons et al one in which the maximum width of one end portion is greater than that of the other end portion would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Sneider, Robiano, Noel and Whitehead et al. With regard to the preambles of the claims, a "kit" for an absorbent article is claimed. "Kit" as defined by the American Heritage Dictionary is "a set of articles used for a specific purpose". The purpose set forth is "for an absorbent article". Kons teaches a set of articles or elements, i.e. the claimed structure, used for the specific purpose of an absorbent article, i.e. a "kit for an absorbent article".

Claim 10: Again this claim is a product by process claim, i.e. claims the wing is dispensed from a roll, see also Claim Language Interpretation section supra, and also note the invention is a kit not a method of dispensing a wing nor a roll of wings. Patentability of product by process claims is based on the end product itself not the method of production. In the instant case the end product is a "kit", i.e. a "kit" for an absorbent article. The end product of Kons as discussed above is the same and thus the claim is unpatentable even if the product is made by a different process. See MPEP 2113.

9. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kons et al '418 in view of Sneider '491, Robiano DE '628, Noel '458 and Whitehead et al '490 as applied to claim 9 above, and further in view of Hammons.

Claim 22 requires hook and loop structures for attachment and detachment between the wing and pantiliner which Kons teaches an adhesive. However, see paragraph 165 of Hammons et al, i.e. interchangeability of various types of connectors between a pantiliner and structure attachable/detachable thereto. To make the adhesive of Kons a hook /loop fastener instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Hammons.

Response to Arguments

10. Applicant's remarks have been considered but are either deemed moot in that the issue argued has not been reraised or deemed not persuasive for the reasons set forth supra. Specifically with regard to the prior art rejections based on Hammons, Applicant's remarks are narrower than the teachings of the prior art and/or the claim language, see discussion supra.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

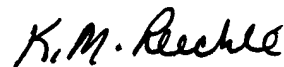
Any new grounds of rejection were necessitated by the amendment to claim 9 and new claims 22-23.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
July 15, 2006